No. 84-249

In the Supreme Court of the United States

October Term, 1984

ROGER L. SPENCER, ET UX,
PETITIONERS,

v.

SOUTH CAROLINA TAX COMMISSION, ET AL.,
RESPONDENTS.

BRIEF FOR THE PETITIONERS

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QUESTIONS PRESENTED

1. May a state court of general jurisdiction refuse to entertain a plaintiff's 42 U.S.C. § 1983 claim and thereby avoid awarding attorney's fees under 42 U.S.C. § 1988 even though the plaintiff successfully challenges in that court a state statute's validity under the United States Constitution?

2. May a state court deny attorney's fees under 42 U.S.C. §§ 1983 and 1988 on the ground that Congress did not intend §§ 1983 and 1988 to require an award of attorney's fees where state law provides a state remedy without providing an award of attorney's fees?

LIST OF PARTIES

Petitioners, plaintiffs-appellants below, are ROGER L. SPENCER and SHIRLEY L. SPENCER.

Respondents, defendants-appellants below, are the SOUTH CAROLINA TAX COMMISSION, JOHN T. WEEKS, as chairman of the South Carolina Tax Commission, S. HUNTER HOWARD, JR., CHARLES N. PLOWDEN and JOHN M. RUCKER in their capacity as commissioners of the South Carolina Tax Commission. Previously, ROBERT C. WASSON, in his prior capacity as a commissioner of the South Carolina Tax Commission, was a defendant.

TABLE OF CONTENTS

Table of Contents--Continued Page

Table of Contents--Continued Page

TABLE OF AUTHORITIES

Cases:

Cases--Continued Page

Cases--Continued Page

Cases--Continued — Page

Cases--Continued — Page

Cases--Continued Page

Cases--Continued Page

Constitution and statutes: Page

Constitution and Statutes--Continued Page

Miscellaneous:

Miscellaneous--Continued Page

OPINIONS BELOW

The opinion of the Supreme Court of South Carolina has not yet been reported in the official reports but is reported at 316 S.E.2d 386. A copy of that opinion is attached as Appendix A to the petition for certiorari. The opinion of the trial court is not reported. A copy is attached to the petition for certiorari as Appendix B.

JURISDICTION

The opinion of the Supreme Court of South Carolina was filed on May 15, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3). The petition for certiorari was filed on August 13, 1984 within 90 days of the date of the decision below as required by 28 U.S.C. § 2101(c). This Court granted certiorari on October 9, 1984.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

United States Constitution, Article VI, clause 2, (App. E at 25a.)*

28 U.S.C. § 1331 (Br. App. A at 1a.)

Tax Injunction Act of 1937: 28 U.S.C. § 1341 (App. E at 25a.)

28 U.S.C. § 1343(3) (Br. App. A at 1a.)

42 U.S.C. § 1982 (Br. App. A at 2a.)

Civil Rights Act of 1871: 42 U.S.C. § 1983 (App. E at 25a.)

Civil Rights Attorney's Fees Awards Act of 1976: 42 U.S.C. § 1988 (App. E at 26a.)

S.C. Code Ann. § 16-5-60 (Br. App. A at 2a.)

* In this brief, citations to the appendix to the petition for certiorari are indicated by "App. ___ at ___." Citations to the appendix to this brief are indicated by "Br. App. ___ at ___." Citations to the joint appendix are indicated by "J.A. __." Citations to the transcript of record filed in the South Carolina Supreme Court are indicated by "R.__." Citations to respondents' brief in opposition to petition for writ of certiorari are indicated by "Resp. Br. In Opp. ___."

S.C. Code Ann. § 12-47-220 (App. E at 26a.)

S.C. Code Ann. § 12-47-270 (App. E at 27a.)

STATEMENT

The South Carolina Supreme Court has refused to enforce the petitioners' rights under 42 U.S.C. §§ 1983 and 1988. Although the petitioners successfully challenged the constitutionality of a state tax law, the court refused to consider their request for an award of fees pursuant to §§ 1983 and 1988. (App. A at 9a-11a.)

The petitioners, the Spencers, have resided in North Carolina since 1977 (R. 20.) but, in 1980, derived all their income from Mr. Spencer's job in South Carolina. (R. 21, 91.) When the Spencers filed for a refund of approximately $500 of South Carolina

income taxes withheld for 1980 (R. 21, 94.), the South Carolina State Tax Commission denied their request and claimed about $100 more in taxes. (R. 23, 94.) The Commission's action was based on a recently enacted South Carolina statute which denied the Spencers the right to deduct any non-business expenses against their South Carolina income because North Carolina did not permit non-residents to take similar non-business deductions against income earned in North Carolina. (App. B at 14a, R. 94.)

The Spencers then followed the procedure, specified by South Carolina law, of paying under protest and initiating a suit for refund in state court under S.C. Code Ann. § 12-47-220. (App. B. at 15a.) The State Tax Commission rejected the Spencers' protest. (R. 94a.) The

Spencers' refund lawsuit challenged the constitutionality of the new tax statute on which the Commission had relied. The Spencers sought the money they had been forced to pay under that statute as well as their attorney's fees. (R. 14.) They alleged, among other things, that the new tax statute violated the privileges and immunities clause, Article IV, § 2, clause 1, as well as other parts of the United States Constitution. (R. 11-13.)

The Spencers brought their lawsuit pursuant to 42 U.S.C. § 1983 and prayed for their attorney's fees under 42 U.S.C. § 1988, in addition to relying on the refund procedure of state law. (App. B at 18a.) The Spencers took advantage of the availability of attorney's fees under § 1988 in order to undertake litigation with a potential recovery of less than

$600. (App. B at 19a.) State court was the only forum reasonably available because the chances of successfully bringing the action in federal court were slim due to the Tax Injunction Act, 28 U.S.C. § 1341, and the principle of comity. See Fair Assessment In Real Estate Ass'n v. McNary, 454 U.S. 100 (1981).

The Spencers prevailed in their attack on the new tax statute. The trial court ruled that it had jurisdiction over the lawsuit under South Carolina law and that the Spencers had complied with all the preconditions for bringing the action under state law. (App. B at 15a.) The state trial court also declared that the tax statute violated the United States Constitution and ordered the Commission, pursuant to S.C. Code Ann. § 12-47-220,

to pay the Spencers approximately $600. (App. B at 17a-18a.) The court, however, refused to entertain the Spencers' § 1983 claim and refused to award attorney's fees under § 1988. (App. B at 10a, 18a-99a.) It recognized

> that the Plaintiffs [had] ... incurred attorney's fees and other expenses which probably [made] the refund ... a "tasteless" victory.

(App. B at 18a.) But it insisted, in spite of §§ 1983 and 1988, that S.C. Code Ann. § 12-47-270 prevented the award of attorney's fees because S.C. Code Ann. § 12-47-220 provided the Spencers a remedy and S.C. Code Ann. § 12-47-270 did not allow costs to be taxed to either party in an action under § 12-47-220. (App. B at 18a-19a.)

The Commission appealed the portion of the order striking down the new tax

statute. (R. 159.) The Spencers appealed the trial court's refusal to entertain the § 1983 claim and denial of attorney's fees. (App. D at 23a-24a.) On appeal, the Commission argued that the denial of attorney's fees should be affirmed for several reasons. One reason was that the trial court had no obligation to consider the § 1983 claim because there was an adequate remedy at state law under § 12-47-220. (App. C at 22a.) In response, the Spencers contended that the federal Constitution required the trial court to consider their § 1983 claim and award them attorney's fees. (App. D at 24a.) They contended further that any state statute that purported to deny them the attorney's fees guaranteed by §§ 1983 and 1988 was invalid because that statute had to yield to §§ 1983 and 1988 under the

supremacy clause of the United States Constitution. (App. D at 23a.)

The South Carolina Supreme Court affirmed the trial court in all respects. (App. A at 11a.) It held that the new statute was unconstitutional under the privileges and immunities clause of the United States Constitution and, therefore, did not address the Spencers' additional constitutional attacks on the statute. (App. A at 9a.) But it left the Spencers with a "tasteless victory" because it affirmed the trial court's decision not to address the § 1983 claim and award attorney's fees under § 1988. (App. A at 10a-11a.)

In support of its decision to reject the Spencers' §§ 1983 and 1988 claim, the state supreme court noted that this Court has not ruled that state courts must

entertain § 1983 actions. (App. A at 10a.) In spite of the Spencers' contention that they had obtained only a "hollow victory," the South Carolina court concluded that §§ 1983 and 1988 may not be invoked to supplement available state remedies by providing attorney's fees. (App. A at 10a.) The court noted that S.C. Code Ann. § 12-47-270 prohibited the taxation of most costs in actions pursuant to § 12-47-220. (App. A at 9a.) The court declared that "state remedies for asserting rights may not be circumvented by invoking § 1983" (App. A at 10a.), and that Congress had not intended that §§ 1983 and 1988 be used solely "to justify the allowance of counsel fees." (App. A at 10a.)

After bearing the expense of successfully challenging the constitutional-

ity of the statute under which they and many others had been taxed, the Spencers were left with a recovery of only $585. (App. B at 20a.)

SUMMARY OF ARGUMENT

The South Carolina Supreme Court's refusal to consider the Spencers' claim for attorney's fees under 42 U.S.C. §§ 1983 and 1988 violates the Constitution. The refusal violates the Constitution because both the supremacy clause and the federal structure created by the Constitution obligate state courts to enforce §§ 1983 and 1988.

1.

The obligation arises because, under Martinez v. State of California, 444 U.S. 277 (1980), and Maine v. Thiboutot, 448 U.S. 1 (1980), it is clear that state courts have jurisdiction over claims

under §§ 1983 and 1988 and, under Testa v. Katt, 330 U.S. 386 (1947), state courts must exercise their jurisdiction to enforce federal claims. Testa v. Katt held that state courts must enforce a federal claim which they would enforce if the claim had arisen under state law. The obligation declared in Testa is a basic constitutional tenet. It was recognized by the framers of the Constitution and has been invoked, affirmed, and enforced repeatedly by this Court in numerous decisions. In addition to establishing the obligation to enforce federal claims, the Court's decisions also show that this obligation exists whenever a state court has jurisdiction over a federal claim.

Therefore, state courts are obligated to enforce §§ 1983 and 1988. The Constitution makes §§ 1983 and 1988 the supreme law of the land in South Carolina and requires state courts to enforce that law.

The obligation of state courts to enforce §§ 1983 and 1988 was implicitly acknowledged by this Court in Martinez. The requirement has been recognized by state courts as well. The great majority of state courts willingly enforce §§ 1983 and 1988. Moreover, the legislative histories of §§ 1983 and 1988 show that Congress contemplated state enforcement when it enacted those statutes. In fact, when § 1988 was amended to provide for attorney's fees, state courts were the only forum available for a substantial class of § 1983 claims.

2.

State court enforcement is not only constitutionally required but also particularly necessary to achieve the goals of §§ 1983 and 1988. Those statutes were enacted to enable victims of violations of federal laws to vindicate their rights even though they have little or no money. Section 1983 supplements state remedies and § 1988 grants fees to ensure that § 1983 can be enforced by the average citizen.

The state courts' rejection of the Spencers' claims undercuts the goals of §§ 1983 and 1988 in cases like this one, as well as many other types of cases. As made clear in Fair Assessment In Real Estate Ass'n v. McNary, 454 U.S. 100 (1981), state courts are the only reasonably available forum for § 1983

claims, like this one, which attack the constitutionality of state tax statutes. If attorney's fees under § 1988 are not available in those situations, many taxpayers will be forced to bear the burden of unconstitutional taxation. Moreover, the unavailability of fees under § 1988 in state court will also prevent or discourage many § 1983 claimants from enforcing their federal rights in other contexts. If state courts may refuse to enforce §§ 1983 and 1988, a situation like that which led to the enactment of § 1983 originally will persist.

3.

There is no justification for the state court's refusal to enforce the Spencers' §§ 1983 and 1988 claim for fees. The sole exception to the rule of Testa does not apply in this case because

it is clear that the state court's jurisdiction is adequate and appropriate under both federal and state law. Nor do the reasons offered by the state supreme court justify its holding. The state court did not even attempt to rely on the exemption to the principle of Testa or apply Testa. Instead, the court suggested that § 1983 may not be used to "circumvent" or "supplement" state remedies.

The suggestion that § 1983 may not be used to circumvent state remedies does not apply to this case. The Spencers have complied with state procedures and have exhausted available state administrative remedies. Moreover, Patsy v. Board of Regents, 457 U.S. 496 (1982), holds that exhaustion is not required in § 1983 actions.

The suggestion that §§ 1983 and 1988 may not be used to supplement state remedies directly contradicts the opinions of this Court construing those statutes. This Court has repeatedly noted that § 1983 was designed to supplement state remedies. Moreover, Maher v. Gagne, 448 U.S. 122 (1980), as well as the legislative history of the fees portion of § 1988, leaves no doubt that fees are available under § 1988 even though relief is granted under an alternate theory without reaching a plaintiff's § 1983 claim. The state court was not free to refuse to enforce §§ 1983 and 1988 simply because the refund which the Spencers sought was available under state law.

Nor was the state court entitled to refuse the Spencers' claims by virtue of the principle of comity or the Tax

Injunction Act, 28 U.S.C § 1341. This Court's opinions show that comity and the Act limit only the power of federal courts and do not exempt either state courts or state tax laws from federal causes of action.

The portion of the judgment of the South Carolina Supreme Court rejecting the Spencers' claim for attorney's fees under §§ 1983 and 1988 should therefore be reversed.

ARGUMENT

The South Carolina Supreme Court's refusal to enforce the Spencers' §§ 1983 and 1988 claim violates the United States Constitution. The court's action violates the Constitution because (1) the Constitution obligates state courts to exercise their jurisdiction to enforce §§ 1983 and 1988; (2) state court

enforcement of §§ 1983 and 1988 is particularly necessary to implement the congressional policy embodied in those statutes; and (3) there is no justification for the South Carolina courts' refusal to enforce the Spencers' claim under §§ 1983 and 1988.

1. The Constitution obligates state courts to exercise their jurisdiction to enforce §§ 1983 and 1988.

A. Martinez v. State of California, 444 U.S. 277 (1980), and Maine v. Thiboutot, 448 U.S. 1 (1980), make it clear that state courts have concurrent jurisdiction with federal courts over claims under §§ 1983 and 1988. In Martinez, this Court approved the California courts' acceptance of jurisdiction over § 1983 claims. 444 U.S. at 283 n.7. Later that same term,

in Thiboutot, the Court explicitly rejected the contention that federal courts have exclusive jurisdiction over § 1983 actions. The Court said:

> [a]ny doubt that state courts may also entertain such actions was dispelled by Martinez.

448 U.S. at 3 n.1. Accord Fair Assessment In Real Estate Ass'n v. McNary, 454 U.S. 100, 116 (1981).[1]

B. The constitution requires state courts to enforce federal claims. In Testa v. Katt, 330 U.S. 386, 394 (1947), this Court made it clear that "[s]tate courts are not free to refuse enforcement of" a federal claim which "would be

[1]No one has questioned in this case the state courts' jurisdiction over the Spencers' federal cause of action. The South Carolina Supreme Court recognized that it had jurisdiction when it cited Martinez and Thiboutot. (App. A at 10a.) The Respondents concede that the state courts have jurisdiction under federal law. (Resp. Br. in Opp. at 3-4.)

enforced by that [s]tate's courts" if the claim had arisen under the laws of that state. Testa involved a refusal by the Supreme Court of Rhode Island to enforce a claim under the Emergency Price Control Act on the ground that it was a "penal statute" of a foreign government. This Court declared that the refusal flew "in the face of the fact that States of the Union constitute a nation" and disregarded the "purpose and effect of" the supremacy clause of the Constitution. 330 U.S. at 389. This Court also made it clear that "the obligation of states to enforce ... federal laws is not lessened by reason of the form in which they are cast or the remedy which they provide." Id. at 391.

Testa did not announce a new principle. It reaffirmed and succinctly

stated a basic tenet of the supremacy clause[2] of the Constitution as well as the fourteenth amendment and the federal structure created by the Constitution. The Court in Testa based its holding directly on Claflin v. Houseman, 93 U.S. 130 (1876), which had relied upon both the intent of the framers of the constitution and the supremacy clause. Testa, 330 U.S. at 390-92; Claflin, 93 U.S. at 136-138. Claflin established that state courts must recognize federal laws "as

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[2]The supremacy clause, Article VI, § 2, states

> This Constitution, and Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. (emphasis added).

operative within the State" and constituting "the law of the land for the State." Id. at 137. Claflin also declared that, under the Constitution, "there is no reason why the State court should not be open for the prosecution of rights growing out of the laws of the United States, to which their jurisdiction is competent, and not denied" by Congress or the Constitution. Id.

The rule of Testa v. Katt has been basic to this country's system of federalism from the beginning. The framers of the Constitution, in part at the request of Mr. Rutledge from South Carolina, elected "to make use of the state tribunals" whenever possible rather than to require Congress to establish inferior federal courts. P. Bator, P. Mishkin, D. Shapiro and H.

Wechsler, Hart and Wechsler's The Federal Courts and The Federal System 11-12 (2nd ed. 1973) (referred to in this brief as "Hart and Wechsler"). Alexander Hamilton explained the key role of the state courts in The Federalist No. 82, 421 (Everyman's ed. 1971). He said:

> State courts will be divested of no part of their primitive jurisdiction further than may relate to an appeal; and I am even of the opinion that in every case in which they were not expressly excluded by the future acts of the national legislature they will of course take cognisance of the causes to which those acts may give birth. This I infer from the nature of judiciary power and from the general genius of the system. ... [T]he national and State systems are to be regarded as ONE WHOLE. The courts of the latter will of course be natural auxiliaries to the execution of the laws of the Union.

In accord with Hamilton's remarks, the first Judiciary Act in 1789 required

"that private litigants ... look to the state tribunal in the first instance for vindication of federal claims." Hart and Wechsler at 844. Until 1875 state courts were the "only forum for vindicating many important federal claims." Palmore v. United States, 411 U.S. 389, 401 (1973). Even after Congress granted federal courts limited general federal question jurisdiction in 1875, "state courts remained the sole forum for [most] federal cases" below the jurisdictional amount. Id. For example, as noted by Thiboutot, prior to the elimination of the amount requirement for federal question jurisdiction in 1980, there was a class of § 1983 claims that could be brought only in state court. Thiboutot, 448 U.S. at 11 n.12.

Robb v. Connolly, 111 U.S. 624, 637 (1884), and other cases before Testa repeatedly asserted the duty of state courts to vindicate federal claims. In Robb, the Court noted that

> the judges of the State courts are required to take an oath to support that Constitution and they are bound by it and the laws of the United States made in pursuance thereof,... as the supreme law of the land, "anything in the ... laws of any State to the contrary notwithstanding."

Id. at 637. Robb declared that state courts have the obligation to "enforce" every right secured by the federal Constitution and laws and that if the state courts should fail in that regard, the "party aggrieved" could bring the case to "this court for final and conclusive determination." Id.

In other cases prior to Testa, this Court repeatedly required the state

courts to fulfill their obligation to vindicate federal claims. In Mondou v. New York, New Haven & Hartford Railroad Co., 223 U.S. 1 (1912), the Supreme Court of Errors of Connecticut refused to entertain an action under the Federal Employers Liability Act ("FELA"). This Court found the state court's assertion that the FELA conflicted with the policies of the state "quite inadmissible". Id. at 57. The Court declared that the policy of the federal act was "as much the policy of Connecticut as if the act had emanated from its own legislature," id., and held that the FELA could "be enforced as of right, in the courts of the states when their jurisdiction, as prescribed by local laws, is adequate to the occasion." Id. at 59 (emphasis supplied). Likewise, in McKnett v. St.

Louis and San Francisco Ry. Co., 292 U.S. 230 (1934), the Court prevented the Alabama courts from refusing jurisdiction over an FELA claim. The Court declared that "a state may not discriminate against rights arising under federal laws." Id. at 234.[3]

[3]To the extent that Ward v. Board of County Comm'rs, 253 U.S. 17 (1920), involved an attempt to assert a federal cause of action in state court, Ward is another example of the Court's insistence, prior to Testa, that state courts enforce federal claims. In Ward, members of an Indian tribe attempted to recover funds allegedly collected coercively by the county in spite of the plaintiffs' federal statutory exemption from state taxation. The Oklahoma Supreme Court rejected the claim for a refund on the ground that the taxes had been paid voluntarily and, in any event, there was no state statute permitting recovery of funds from the county. This Court reversed, holding that the taxes had been paid coercively and that the 14th Amendment required that the members of the tribe be given a refund in state court, even though there was no state statutory cause of action permitting it. Because the Court's opinion in Ward states that the "right to the exemption was a federal right," id. at 22, it appears that the reversal of the state supreme court in Ward, in effect, forced the state courts to entertain a federal cause of action.

Since Testa, this Court has again and again underscored the importance of the obligation of state courts to enforce federal laws. In Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 238 (1969), the Court noted that state courts are required to enforce 42 U.S.C. § 1982, a statute closely related to § 1983. The Court asserted that the remedy available in federal courts to enforce § 1982 "is available in the state courts." Id. Stone v. Powell, 428 U.S. 465, 493 n.35 (1976), declared again that state courts have "a constitutional obligation to ... uphold federal law". Hathorn v. Lovorn, 457 U.S. 255, 269 (1982) (emphasis added), reiterated that a state court presented with a federal claim has the "duty" to decide it, if the state court has the

"power" to do so. In Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 478 and n.4 (1981), this Court noted that state court enforcement of federal claims is part of "the relation between the States and the National Government within our federal system." The Court recognized further that state court jurisdiction "facilitates the enforcement of federal rights" and that "[s]tate courts stand ready to vindicate the federal right[s]." Id.

Recently the Court's opinion and Justice O'Connor's concurring and dissenting opinion in Federal Energy Regulatory Comm'n v. Mississippi, 456 U.S. 742 (1982), both specifically reaffirmed the rule of Testa. The Court's opinion reasserted the "obligation of states" to enforce

federal laws. 456 U.S. at 769; see also id. at 760. Justice O'Connor's opinion agreed that state courts must "evenhandedly adjudicate state and federal claims falling within their jurisdiction." Id. at 785.[4]

C. The obligation to enforce federal claims arises by implication whenever state courts have jurisdiction. Congress need not specifically command state courts to enforce federal laws. Mondou, McKnett, Testa, and Douglas v. New York, N.H. & H.R. Co., 279 U.S. 377 (1920), establish that the existence of state court jurisdiction under federal

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[4]In Jackson v. Lyker Bros. Steamship Co., 387 U.S. 731, 735-36 (1967), the Court also invoked Testa to require Louisiana courts to adjudicate admiralty cases within their jurisdiction, and Justice Marshall's concurring opinion in Employees of Dept. of Public Health & Welfare v. Missouri, 411 U.S. 279, 298 (1973), noted that under Testa state courts must enforce federal law because it is "the supreme law of the land."

law is sufficient to create an obligation to exercise that jurisdiction.

Mondou, Douglas, and McKnett involved claims under the FELA. In those cases, this Court made it clear that the duty of state courts to enforce the Act arose simply as a result of the existence of their concurrent jurisdiction.[5] The Court declared that

> [t]he existence of jurisdiction creates an implication of duty to exercise it and that its exercise may be onerous does not militate against that implication.

Mondou, 223 U.S. at 58. The state

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[5]Although an amendment to the FELA in 1910 had stated that the jurisdiction of the federal courts was "concurrent with" that of state courts, this Court interpreted the amendment as merely acknowledging, "instead of granting," state jurisdiction which had already existed and had been acknowledged previously in the general federal question statute enacted in 1875. Mondou, 223 U.S. at 56. The statutory acknowledgement of concurrent state jurisdiction served only to eliminate any con-

courts were required to enforce the FELA because they had jurisdiction to do so, not because of any explicit congressional command to enforce the Act.

Testa v. Katt also shows that a state court with power to entertain federal claims has the duty to exercise that power.[6] Testa involved a claim under the Emergency Price Control Act which, like the FELA, simply acknowledged the existence of concurrent state court jurisdiction and did not attempt

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tention that federal courts had exclusive jurisdiction. This Court noted specifically that "Congress [had] not attempted to compel states to provide courts" to enforce the FELA, McKnett, 292 U.S. at 233, or "to require State Courts to entertain suits arising under it," Douglas, 279 U.S. at 387.

[6]In the same way, it appears that this Court, in Ward v. Board of County Comm'rs, 253 U.S. 17 (1920), required the state courts to enforce a federal right to a tax refund without any reference to a statutory requirement that they do so. See note 3 at 28, supra.

to command state courts to enforce its provisions. Importantly, the Court's holding was not derived from statutory language. The Court concluded that the explication in Claflin v. Houseman, 93 U.S. 130 (1876), of the supremacy clause and the general structure of the federal government "answered most of the arguments...advanced against the power and duty of state courts" to enforce federal claims. Testa, 330 U.S. at 391 (emphasis added). Testa, therefore, established that, by virtue of the constitutional structure of the government and the supremacy clause, state courts are obligated to exercise their concurrent jurisdiction over federal claims.

D. The obligation to enforce federal claims applies to the Spencers' §§ 1983 and 1988 claims. Martinez shows

that the principle of Testa applies to this case.[7] This Court in Martinez was not required to consider whether a state court must enforce §§ 1983 and 1988. Nevertheless, the Court implicitly recognized the obligation of state courts under Testa to enforce § 1983 as well as § 1988 when it said:

> We note that where the same type of claim, if arising under state law, would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim. Testa v. Katt, 330 U.S., at 394. But see Chamberlain v. Brown, 223 Tenn. 25, 442 S.W.2d 248 (1969).[8]

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[7]See 13B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure Jurisdiction 2d § 3573, at 197 (1984).

[8]In Chamberlain v. Brown, the Tennessee court departed from the rule of Testa and held that state courts in Tennessee are not required to entertain § 1983 actions. The court in Chamberlain, however, did not have the benefit of this Court's holdings in Martinez and Thiboutot.

Martinez, 444 U.S. at 283 n.7. The obligation of state courts to enforce §§ 1983 and 1988 is also implicit in Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 238 (1969), where the Court ruled that the remedies for 42 U.S.C. § 1982, a closely related statute, are "available in state courts."

Testa made it clear that, under the Constitution, §§ 1983 and 1988 are the law of the land in South Carolina and that the courts of South Carolina must enforce them. South Carolina courts may not, therefore, refuse to consider the Spencers' §§ 1983 and 1988 claim for attorney's fees.

In accord with the Constitution, Testa, and the implications of Martinez and Sullivan, numerous state courts have

recognized that they must enforce § 1983.[9] Of those courts, the Supreme Court of Wisconsin in Terry v. Kolski, 78 Wis. 2d 475, 254 N.W.2d 704 (1977), has provided the most thorough analysis of the issue. After considering the supremacy clause, the legislative

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[9]See, e.g. Terrell v. City of Bessemer, 406 So. 2d 337, 340 (Ala. 1981) ("courts of this state must accept jurisdiction over claims brought under 42 U.S.C. § 1983 if a § 1983 plaintiff selects a state court as his forum"); Felder v. Foster, 107 Misc. 2d 782, 436 N.Y.S.2d 675, 677 (N.Y. Sup. Ct. 1981) ("[t]his court has jurisdiction to entertain all proceedings brought under sections 1983 and 1988... and must exercise that jurisdiction when such a proceeding is properly before it (Testa v. Katt....)"); Colvin v. Bowen, 399 N.E.2d 835, 837 (Ind. Ct. App. 1980) ("[S]tate courts of general jurisdiction are not free to deny enforcement of claims growing out of a valid federal statute such as § 1983."); Brown v. Pitchess, 119 Cal. Rptr. 204, 531 P.2d 772, 775 (Cal. 1975) (en banc) ("'the existence of [concurrent] jurisdiction creates the duty to exercise it," and it "is unlikely that this decision will precipitate" a flood of cases in California courts.)

history of § 1983, and numerous opinions of this Court, including Testa v. Katt, the court concluded that Wisconsin state courts

> have jurisdiction to hear and decide Sec. 1983 cases. In addition, they have an affirmative obligation under the Constitution of the United States to take jurisdiction whether or not the federal right asserted is pendent to a state claim.

Terry v. Kolski, 254 N.W.2d at 712. Courts in thirty-one states and the District of Columbia have also exercised their jurisdiction to enforce § 1983.[10] The state courts which enforce § 1983 also enforce § 1988.[11]

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[10] These decisions are collected in Appendix B to this brief.

[11] See, e.g. Stratos v. Department of Public Welfare, 387 Mass. 312, 439 N.E.2d 778, 783-85 (1982); Johnson v. Blum, 58 N.Y.2d 454, 448 N.E.2d 449, 450-451 (1983) (fee must be awarded absent "special circumstances"); Thompson v. Village of Hales Corners, 115 Wis.

The Tennessee decision[12] noted in Martinez and the South Carolina court's

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2d 289, 340 N.W.2d 704, 711, 714 (1983) (award of damages and attorney's fees affirmed even though it exceeded state law limitation on municipal liability); Ward Lumber Co. v. Brooks, 50 N.C. App. 294, 273 S.E.2d 331, 333 (1981) ("it is not necessary that the court base its decision on § 1983 in order for the prevailing party to be entitled to attorney's fees under ... § 1988"); Davis v. Everett, 443 So. 2d 1232, 1235 (Ala. 1983); Caputo v. City of Chicago, 113 Ill. App. 3d 45, 446 N.E.2d 1240, 1242 (1983) (denied fees but recognized that proper § 1983 claims may be brought in state court and "fees authorized under 42 U.S.C. § 1988 are an appropriate part of the remedy in such cases").

[12] In addition to the Tennessee court's decision in Chamberlain v. Brown, 223 Tenn. 25, 442 S.W.2d 248, 252 (1969), a Florida court in City of North Miami v. Schy, 408 So. 2d 670 (Fla. Dist. Ct. App. 1981), refused with little explanation to entertain a § 1983 claim. Courts in Georgia and Mississippi, in certain narrow contexts only, have also refused § 1983 claims. See Backus v. Chilivis, 236 Ga. 500, 224 S.E.2d 370, 374 (1976) (§ 1983 rejected if administrative remedies not exhausted and cause of action is "founded only on the claim that [tax] assessments are unequal"); State Tax Commission v. Fondren, 387 So. 2d 712, 723 (Miss. 1980), cert. denied, 450 U.S. 1040 (1981) (state courts have jurisdiction over § 1983 claims but state remedies must be exhausted before challenging equality of tax assessments under § 1983 in state court).

decision in this case are contrary to those of most other state courts, as well as Testa, its precursors and progeny.

State court enforcement of §§ 1983 and 1988 is consistent with congressional intent. The legislative histories of §§ 1983 and 1988 show that members of the Congresses that enacted those statutes contemplated enforcement in state courts. As this Court noted in Allen v. McCurry, 449 U.S. 90, 99-100 (1980), by enacting § 1983, "Congress was adding to the jurisdiction of the federal courts, not subtracting from that of the state courts.... The debates contain several references to the concurrent jurisdiction of the state courts over federal questions." Many of those who enacted § 1983 understood the

act "to provide dual or concurrent forums in the state and federal system, enabling the plaintiff to chose a forum in which to seek relief." Patsy v. Board of Regents of State of Florida, 457 U.S. 496, 506 (1982).[13]

Likewise, when Congress amended § 1988 to provide attorney's fees in § 1983 actions, Representative Drinan repeatedly described the act as "authoriz[ing] the award of a reasonable attorney's fee in actions brought in

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[13]Had Congress intended to exclude state courts when it originally enacted § 1983 as part of the Civil Rights Act of 1871, Congress would have specifically stated that the federal courts had jurisdiction "exclusively of the courts of several States" as it did in those exact words in other related legislation, i.e. Civil Rights Acts of 1866, 1870, and 1875. See Civil Rights Act of 1875, ch. 114, § 3, 18 stat. 335 (1875); Civil Rights Act of 1870, ch. 114, § 8, 16 stat. 141, 142 (1870); Civil Rights Act of 1866, ch. 31, § 3, 14 stat. 27 (1866).

State or Federal courts." Thiboutot, 448 U.S. at 11. As noted in Thiboutot, "the fee provision [of § 1988] is part of the § 1983 remedy whether the action is brought in federal or state court." Id. Moreover, state court enforcement was essential when Congress provided fees under § 1988 because, at that time, a large class of § 1983 claims could be brought only in state court. Id. at 11 n.12.

2. State court enforcement is particularly necessary to implement the congressional policy embodied in §§ 1983 and 1988.

A. Congress enacted §§ 1983 and 1988 to enable the victims of violations of the nation's laws to vindicate their rights even if they have "little or no money."[14] Section 1983 was intended to supplement state remedies by providing a cause of action to those whose federal rights have been denied by persons acting under state authority. See, e.g., Monroe v. Pape, 365 U.S. 167, 173

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[14]S. Rep. No. 1011, 94th Cong., 2d Sess. 2 (1976), reprinted in 1976 U.S. Code Cong. & Ad. News 5908, 5910. (referred to in this brief as "Senate Report on Fees Act")

(1961);[15] Maine v. Thiboutot, 448 U.S. at 5-8. Awards of attorney's fees under § 1988 in state and federal courts are "'an integral part of the remedies necessary to obtain' compliance with § 1983." Id. at 11, quoting Senate Report on Fees Act at 5. Congress provided the right to attorney's fees under § 1988 in state and federal courts because it was concerned that the prospect of an empty victory would prevent the enforcement of § 1983. The Senate Report on the attorney's fees portion of § 1988 noted that

> [if] our civil rights laws are not to become mere hollow pronouncements which the average citizen cannot enforce, we must maintain the traditionally effective remedy of fee shifting in these cases.

Senate Report on Fees Act at 6.

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[15] Monroe was overruled on other grounds in Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978).

The right to obtain fees in § 1983 actions in state court was crucial in 1976 when Congress amended § 1988 to provide for fees. Then, and until 1980, there was "a class of cases stating causes of action under § 1983 but not cognizable in federal court absent the $10,000 jurisdiction amount of [28 U.S.C.] § 1331(a)." Thiboutot, 448 U.S. at 11 n.12. It would be "contrary to congressional intent" for the lack of fees to be a financial barrier in the § 1983 cases that are confined to state court. Id. The decision below conflicts with congressional intent because it establishes just such a financial barrier. The South Carolina Supreme Court itself acknowledged that the Spencers may have obtained only a "hollow victory". (App. A at 9a.)

B. The state court's rejection of the Spencers' §§ 1983 and 1988 claim deprives many victims of unconstitutional state taxation of their only practical remedy. State courts were the only forum reasonably available for the Spencers' lawsuit. The Tax Injunction Act,[16] 28 U.S.C. § 1341, and the principle of comity[17] effectively

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[16]The Tax Injunction Act prohibits district courts from enjoining the collection of any state tax where a "plain, speedy, and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341.

[17]The Court in McNary, 454 U.S. at 116, held that "taxpayers are barred by the principle of comity from asserting § 1983 actions against the validity of state tax systems in federal court." McNary did not actually decide whether a § 1983 action attacking a state tax law but not requiring scrutiny of tax assessment practices may be brought in federal court. Id. at 107 n.4. Nevertheless, the risk of being unable to bring such an action

prevented them from proceeding in federal court. As this Court noted in Fair Assessment In Real Estate Ass'n v. McNary, 454 U.S. 100 (1981), "taxpayers [who attack state tax statutes] must seek protection of their federal rights by state remedies," which in McNary included "a § 1983 claim in state court." Id. at 116.

Once the Spencers were forced to proceed in state court, the right to invoke §§ 1983 and 1988 became more important. South Carolina law does not provide attorney's fees or the costs of most items to those who successfully

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in federal court after McNary is great enough to discourage plaintiffs with small claims from incurring the cost of attempting to proceed in federal court.

challenge state tax statutes.[18] Taxpayer class actions are generally not permitted in South Carolina state courts.[19] It would have been financially impractical for the Spencers to bring their constitutional claim for a $585 tax refund in state court without the availability of attorney's fees under §§ 1983 and 1988.

The rejection of the Spencers' §§ 1983 and 1988 claim undercut the policies of those statutes by turning a constitutional victory into a financial

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[18] See S.C. Code Ann. § 12-47-270 and Hegler v. Gulf Insurance Co., 270 S.C. 548, 549, 243 S.E.2d 443, 444 (1978) ("as a general rule, attorney's fees are not recoverable [in South Carolina] unless authorized by contract or statute").

[19] See Long v. Seabrook, 260 S.C. 562, 567-68, 197 S.E.2d 659, 661-62 (1973).

hardship. After incurring the substantial expense necessary to establish the unconstitutionality of the statute under which they and others were taxed, the Spencers recovered only $585. Their victory became, in the words of the trial judge, "tasteless" and a discouraging example for other taxpayers. (App. B at 18a.)

Unless they can obtain attorney's fees under §§ 1983 and 1988 in state court, taxpayers often have no choice but to bear the burden of unconstitutional state taxation. In those circumstances, the state is free unconstitutionally to extract small amounts from many people who lack the means to protect themselves. This is exactly the type of injustice that §§ 1983 and 1988 were enacted to prevent.

The burden of unconstitutional taxes is especially unjust to people like the Spencers, who must pay taxes in South Carolina although they reside and vote in another state. If left undisturbed, the decision below will certainly prevent or discourage other taxpayers from attempting to oppose unconstitutional state taxes. Contrary to congressional intent, § 1983 and the Constitution will be no more than "hollow pronouncements" for the Spencers and others with similar claims.

C. The rejection of the Spencers' claim will also prevent or discourage the enforcement of federal rights in other areas. The South Carolina court's decision is not limited to matters involving state taxation. Under the rationale of the decision below, South

Carolina state courts may not enforce §§ 1983 and 1988 in any situation where they provide remedies in addition to those available under state law. This decision thereby excludes virtually all § 1983 actions from state courts in South Carolina, because attorney's fees are available in any § 1983 action, Maine v. Thiboutot, 448 U.S. at 9, whereas attorney's fees are not normally available under state law in South Carolina.[20] In most cases where the § 1983 remedy remains available under the South Carolina Supreme Court's decision, that remedy is meaningless because state law already provides for attorney's fees. Therefore, in South Carolina courts, in most situations

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[20] See note 18 at 48, supra.

§§ 1983 and 1988 will be forbidden because they supplement state remedies by providing for attorney's fees; and in most of the cases where §§ 1983 and 1988 will be available, they will be redundant.

Further, if this Court permits state courts to shirk their obligation to enforce §§ 1983 and 1988, those who act under the color of state law will have less cause for concern if they deny federal rights. Many of their victims will be prevented or discouraged from availing themselves of the protections Congress has provided in §§ 1983 and 1988, for a state court is often the only practical forum for many §§ 1983 and 1988 claims.

Individual financial or logistical problems prevent many litigants from bringing their claims in federal court.

For example, due to the limited jurisdiction of federal courts, state courts may be the only place efficiently to resolve an entire matter including § 1983 claims and other claims cognizable only in state courts or claims involving additional parties, some of whom cannot be sued in federal court. See Aldinger v. Howard, 427 U.S. 1, 14-15 (1976); Owen Equipment and Erection Co. v. Kroger, 437 U.S. 365, 372 n.12, 377 (1978); Pennhurst State School and Hospital v. Halderman, 104 S. Ct. 900, 919-920 (1984).[21] State courts may also be the only useful forum when a

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[21] See Shapiro, Wrong Turns: The Eleventh Amendment and the Pennhurst Case, 98 Harv. L. Rev. 61, 81 (1984). The author asserts that "after Pennhurst, the litigant who does not want to forgo certain state law claims must take them to state court in the first instance."

retroactive award of damages from state funds is essential and the state has waived sovereign immunity only in its own courts. See Quern v. Jordan, 440 U.S. 332, 339-40 (1979); Pennhurst, 104 S. Ct. at 907 n.9.

Moreover, as pointed out by New Times, Inc. v. Arizona Board of Regents, 20 Ariz. App. 422, 513 P.2d 960, 965 (1973), aff'd, 110 Ariz. 367, 519 P.2d 169 (1974), many citizens of that state, "because of their geographical residence, would be inconvenienced if they were forced to litigate in a federal, rather than a state, court." Closing state courts may also deprive litigants of the most accurate and efficient method of resolving questions of state law. Section 1983 actions often depend heavily, as did

this one, upon the proper construction and interpretation of state law. Those actions "are more properly heard in the state courts". McNary, 454 U.S. at 108 n.6., quoting Perez v. Ledesma, 401 U.S. 82, 128 n.17 (1971) (Brennan, J., concurring in part and dissenting in part); see also Pennhurst, 104 S. Ct. at 920 n.32.

There can be no doubt that the goals of §§ 1983 and 1988 will be significantly impaired if this Court permits state courts to discriminate against these federal claims. The duty of state court to enforce such important national policies is an obligation imposed by the supremacy clause and the fourteenth amendment and also implicit in the federal constitutional framework. As pointed out by the Supreme Court of

Wisconsin in Terry v. Kolski, 78 Wisc. 2d 475, 254 N.W.2d 704, 710 (1977), state courts which refuse to enforce § 1983 place themselves "in the same position" as the states during the Reconstruction Era which "refused to recognize federal civil rights in state courts."

3. There is no justification for the state courts' refusal to consider the Spencers' claim for fees under §§ 1983 and 1988.

A. This case does not fall within the exception to the general rule of Testa v. Katt. Testa does not require a state court to enforce a federal claim unless its jurisdiction "under established local law" is "adequate and appropriate." 330 U.S. at 394.[22]

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[22]Under this exception, a state court with no jurisdiction over claims arising in the locality where a federal claim has arisen need not entertain the federal claim. Herb v. Pitcairn, 324 U.S. 117, 120-121 (1945). A state court may also refuse to entertain a federal claim as the result of a nondiscriminatory application of the policy of forum non conveniens. Missouri Ex. Rel. Southern Railway v. Mayfield, 340 U.S. 1 (1950). But, as made clear in McKnett, a court may not decline jurisdiction of a federal claim based on any principle which, in effect, discriminates against a claim because it is brought under federal law. 292 U.S. at 233.

The exception recognized in Testa does not apply to the Spencers' claim for attorney's fees in this case. There is no dispute that the jurisdiction of the South Carolina trial court is both "adequate and appropriate" under established local law.[23]

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[23]Article V, Section 7, of the South Carolina Constitution provides that "[t]he Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases...." The §§ 1983 and 1988 claims made and remedies sought in the Spencers' lawsuit are the sort of claims and remedies with which the South Carolina trial courts are familiar. South Carolina trial courts routinely grant monetary judgments. Indeed, the trial court specifically held that it had jurisdiction to grant the refund which was sought through § 1983 as well as through state law. S.C. Code Ann. § 15-53-20 expressly authorizes the state trial courts to grant declaratory relief in appropriate cases. In some contexts, state statutes also permit trial courts to award reasonable attorney's fees. See, e.g., the South Carolina Uniform Securities Act, S.C. Code Ann. § 35-1-1490, and the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-140. In fact, S.C. Code Ann. § 16-5-60 grants a cause of action using language similar to that of § 1983. Section 16-5-60 is set forth at Br. App. A.

B. None of the reasons offered by the South Carolina Supreme Court justifies its refusal to consider the Spencers' claims. The South Carolina court did not rely upon the sole exception, recognized in Testa, to the obligation to adjudicate federal claims. Indeed, it did not attempt at all to apply the principles of Testa, Mondou, and McKnett. Instead, the South Carolina court merely noted that this Court had not yet decided whether state courts must "open their doors to § 1983 actions." (App. A at 10a.) Although the South Carolina court's opinion does not precisely set forth the grounds for its holding, the opinion appears to suggest two arguments for refusing to consider the Spencers' §§ 1983 and 1988 claim: (1) § 1983 may not be used to

"circumvent" state remedies and (2) § 1983 may not be invoked "solely" to supplement state remedies with attorney's fees. Both arguments rest on a misinterpretation of §§ 1983 and 1988.

If the state court has attempted to impose an exhaustion requirement by asserting that § 1983 may not be used to circumvent state remedies, the decision conflicts with Patsy v. Board of Regents, 457 U.S. 496 (1982). Patsy held that exhaustion of state remedies is not required in § 1983 actions. Moreover, the assertion is irrelevant in this case. There has been no effort by the Spencers to circumvent state remedies. The Spencers paid the disputed taxes, exhausted all available administrative remedies, and, in accord with

state procedures, filed suit for a refund in state court along with their § 1983 claim. The state supreme court's opinion acknowledges that the Spencers complied with state procedures. It grants them the refund requested and does not disturb the lower court's finding of proper jurisdiction under state law.

To the extent that the state court's opinion suggests that the court was not required to reach the Spencers' § 1983 claim after granting relief under state statutes, it conflicts with § 1988.[24] Maher v. Gagne, 448 U.S. 122 (1980), makes the conflict plain.

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[24]The court's second reason for denying the Spencer's claim also rests on a misconception of Brown v. Hornbeck, 54 Md. App. 404, 458 A.2d 900 (1983), as well as the purposes of §§ 1983 and 1988. The South Carolina court repeated a statement from Brown that Congress

Maher declared that under § 1988, a plaintiff who joins a claim that does not allow fees with a § 1983 claim and prevails on the non-fee claim "'is entitled to a determination on the other claim for the purpose of awarding counsel fees.'" Id. at 132 n.15, quoting H.R. Rep. No. 1558, 94th Cong. 2d Sess 4 n.7 (1976)

did not intend to permit the allegation of a claim under §§ 1983 and 1988 solely "to justify the allowance of counsel fees." (App. A at 10a.), Brown, 458 A.2d at 904-905. The statement from Brown is totally inapplicable to the Spencers' case because in Brown the plaintiffs attempted to invoke § 1983 for the purpose of obtaining attorney's fees even though they had no substantial federal claim. The Maryland court's rejection of that attempt does not indicate hostility to substantial §§ 1983 and 1988 claims. Indeed, Maryland state courts are open to the enforcement of substantial federal claims under § 1983, De Bleecker v. Montgomery County, 48 Md. App. 455, 427 A.2d 1075 (1981), rev'd on other grounds, 292 Md. 498, 438 A.2d 1348 (1982), and Maryland courts also award fees under § 1988 even when a plaintiff in a § 1983 suit obtains relief through state law. Attorney Grievance Comm. v. Newman, 479 A.2d 352, 358 (Md. App. 1984).

Stratos v. Department of Public Welfare, 387 Mass. 312, 439 N.E.2d 778 (1982), also shows the error of the South Carolina court's position. In Stratos, the defendant contended that the § 1983 claim should be disregarded as "superfluous" because the remedy sought was available under state law. 439 N.E. 2d at 783. The defendant contended further that the § 1983 claim was "an unnecessary afterthought, appended to the case as a 'hook' on which to hang an award of attorney's fees." Id. Relying primarily on Maher v. Gagne, the court recognized the fallacy of the defendant's argument and dismissed it saying:

> Section 1983 provides an independent remedy for violation of rights protected by Federal law. If such a right is at issue, the § 1983

> remedy is available, even if the State has also provided a means of obtaining relief. ... Section 1988 creates an incentive to vindicate federally protected rights. ... The fee incentive is equally useful and necessary whether the right in question is secured by Federal law alone or by State law as well. Therefore, the fact that a plaintiff claiming relief under § 1983 could have obtained relief solely by means of a state remedy - even a "routine" one - does not foreclose a fee award.

Id.

The Spencers properly relied on §§ 1983 and 1988 to supplement the state remedies, as Congress intended. As this Court noted last term in Smith v. Robinson, 104 S. Ct. 3457, 3468 n.12 (1984), "[t]here is, of course, nothing wrong with seeking relief on the basis of certain statutes because those statutes provide for attorney's fees, or with amending a complaint to include claims that provide for attorney's

fees," as long as the fee producing claim is "reasonably related to the plaintiff's ultimate success." Id. at 3467. The state court's award of attorney's fees affirmed in Maine v. Thiboutot was obtained as a result of an amendment to the complaint adding §§ 1983 and 1988 as an additional basis for relief. 448 U.S. at 3, 11. The legislative history of the fees portion of § 1988 "makes clear" that a plaintiff does not lose the right to fees merely because he prevails "on one of two or more alternative bases for relief." Smith v. Robinson, 104 S. Ct. at 3467 n.10.

Therefore, under § 1988 the state court could not avoid the Spencers' claim for fees by purporting to grant the relief requested solely under state

law. The Spencers prevailed in their constitutional attack on the statute. That attack was the heart of their § 1983 claim. They were entitled to a fee award under § 1988. Denying the Spencers' fees thwarts the federal policy embodied in § 1988 in favor of a contrary state policy. It also violates both the holding of Testa and Mondou as well as the supremacy clause.

C. Neither the Tax Injunction Act nor comity authorize the South Carolina courts' refusal to consider the Spencers' federal claim. In opposition to the petition for certiorari, Respondents contended that the Tax Injunction Act, 28 U.S.C. § 1341, and the principle of comity generally permit "a state to handle its own fiscal affairs unimpeded by federal causes of action." Brief in

opposition to certiorari at 5-6. This contention is wrong. Section 1341 and comity do not provide state courts an exemption from federal causes of action. They limit only the power of federal courts.[25]

Rosewell v. LaSalle National Bank, 450 U.S. 503 (1981), shows that § 1341 does not exempt state courts from having to entertain federal claims against state tax laws. In Rosewell, this Court stated that the Tax Injunction Act simply "transfers" a class of federal claims to state courts as long as state procedures are adequate. Id. at 515 n.19. There is no hint in that case that Congress exempted state courts from

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[25] See California v. Grace Brethren Church, 457 U.S. 353, 409 n.22 (1982). In that case the Court stated that the purpose of § 1341 was to limit "federal court interference with...state taxes (emphasis added)." Id. at 411.

their duty to enforce federal claims. In fact, the Court made it clear that under § 1341, to avoid federal court interference, a state must afford "'full protection to ... federal rights.'" Id. at 512-513, quoting Hillsborough v. Cromwell, 326 U.S. 620, 625 (1946). In Rosewell, this Court found that the Illinois state court procedures under consideration were adequate because there was "no question" that the state courts would "hear and decide any federal claim" including any claim of a "federal right" to receive interest on taxes withheld. Id. at 515, 517.[26] The Tax Injunction Act does not suggest that state procedures which deny a federal right to

[26]It was clear in Rosewell that the taxpayers could have brought a § 1983 action in state court. 450 U.S. at 511 n.14.

attorney's fees are adequate to vindicate federal rights.

Similarly, Fair Assessment In Real Estate Ass'n v. McNary, 454 U.S. 100 (1981), shows that respondents also misconstrue the principle of comity. Respondents contend that it would directly contradict McNary "to have a federal cause of action forced upon the state judicial system." Respondents' brief in opposition to certiorari at 6. To the contrary, McNary acknowledges that states are exempt by virtue of comity from federal court interference in matters of taxation only "'where the federal rights of the persons [involved can] ... otherwise be preserved unimpaired.'" 454 U.S. at 109, quoting Boise Artesian Water Co. v. Boise City,

213 U.S. 276, 282 (1909).[27] McNary, like Rosewell, acknowledges that state courts are expected to enforce federal rights even when state taxation is involved.

McNary did not exempt state courts from § 1983 actions. In fact, it discussed the adequacy of the available state remedies and expressly noted that the plaintiff in that case could assert a § 1983 action in state court. 454 U.S. at 116-117. McNary also acknowledged implicitly that § 1983 provides a federal right to certain remedies. The Court said

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[27] In that respect, McNary is consistent with Ward v. Board of Comm'rs, 253 U.S. 17 (1980). In Ward, as discussed in note 3 at 28, supra, comity did not prevent this Court from ordering state courts to refund taxes taken in violation of a federal law even though state procedures did not permit the refund.

that "by its terms [§ 1983] gave a federal cause of action to prisoners, taxpayers, or anyone else who was able to prove that his constitutional or federal rights had been denied by any State." 454 U.S. at 103-104 (emphasis added). Section 1983, in conjunction with § 1988, also provides a federal right to attorney's fees in state courts. Thiboutot, 448 U.S. at 11 and n.12. The state courts of South Carolina have wrongly denied the Spencers that right.[28]

In arguing that state courts may ignore federal causes of action in tax

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[28] In contrast to the action of the court in this case, the Illinois court in Beverly Bank v. Board of Review, 117 Ill. App. 3d 656, 453 N.E.2d 926, 99, 102 (1983), exercised jurisdiction over a § 1983 suit attacking state taxation that was moved from federal court to state court after McNary.

cases, Respondents overlook that, under the supremacy clause, federal laws are part of the law that state courts enforce. State tax laws, like other state laws, are subject to attack when they conflict with federal law. Although federal courts may be closed to the Spencers' claims under § 1341 and comity, the state courts have an obligation to enforce those claims and grant the Spencers the relief federal law provides.

In addition, Respondents have contended that the lower courts' refusal to entertain the Spencers' § 1983 claim is justified by the exhaustion principle derived from § 1341 in Justice Brennan's concurring opinion in McNary, 454 U.S. at 133-137. Respondents' brief in opposition to certiorari at 6-7. Respondents,

however, misconstrue Justice Brennan's opinion. That opinion concluded only that § 1341 implicitly requires exhaustion of state administrative remedies, not state judicial remedies. 454 U.S. at 134 n.22. The Spencers exhausted any available administrative remedies. The concurring opinion in McNary does not permit the refusal of the Spencers' federal claim by state courts.

Nothing explicit or implicit in § 1341 or the principle of comity authorizes state courts to refuse to enforce federal claims based on § 1983 or § 1988.

CONCLUSION

For the reasons expressed above, that portion of the judgment of the South Carolina Supreme Court rejecting the Petitioners' claim for attorney's fees

under §§ 1983 and 1988 should be reversed.

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APPENDIX A

STATUTES INVOLVED
IN ADDITION TO THOSE SET FORTH IN
APPENDIX E TO PETITION

28 U.S.C. § 1331 provides:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1343 provides in pertinent part:

> (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> . . .
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

42 U.S.C. § 1982 provides:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

S.C. Code Ann. § 16-5-60 provides:

> Suits against county for damages to person or property resulting from violation of person's civil rights.
>
> Any citizen who shall be hindered, prevented or obstructed in the exercise of the rights and privileges secured to him by the Constitution and laws of the United States or by the Constitution and laws of this State or shall be injured in his person or property because of his exercise of the same may claim and prosecute the county in which the offense shall be committed for any damages he shall sustain thereby, and the county shall be responsible for the payment of such damages as the court may award, which shall be paid by the county treasurer of such county on a warrant drawn by the governing body thereof. Such warrant shall be drawn by the governing body as soon as a certified copy of the judgment roll is delivered to them for file in their office.

APPENDIX B

STATE COURTS WHICH HAVE EXERCISED THEIR JURISDICTION TO ENFORCE § 1983 CLAIMS

Alabama - Terrell v. City of Bessemer, 406 So. 2d 337, 340 (Ala. 1981);

Alaska - Fairbanks Correctional Center v. Williamson, 600 P.2d 743, 747 (Alas. 1979);

Arizona - New Times, Inc. v. Arizona Board of Regents, 110 Ariz. 367, 519 P.2d 169, 176 (1974) (en banc);

California - Brown v. Pitchess, 119 Cal. Rptr. 204, 531 P.2d 772, 775 (Cal. 1975) (en banc);

Colorado - Espinoza v. O'Dell, 633 P.2d 455, 460 n.2 (Colo. 1981);

Connecticut - Vason v. Carrano, 31 Conn. Sup. 338, 330 A.2d 98 (1974);

District of Columbia - Long v. District of Columbia, 469 F.2d 927, 937 (D.C. Cir. 1972) (per Wilkey, J.);

Illinois - Alberty v. Daniel, 25 Ill. App. 3d 291, 323 N.E.2d 110, 114 (1974);

Indiana - Colvin v. Bowen, 399 N.E.2d 835, 837 (Ind. Ct. App. 1980);

Kansas - Cooper v. Hutchinson Police Department, 6 Kan. App. 2d 806, 636 P.2d 184, 186 (1981);

Kentucky - Scott v. Campbell County Board of Education, 618 S.W.2d 589, 590 (Ky. 1981);

Louisiana - Ricard v. State, 390 So. 2d 882, 883-84 (La. 1980);

Maine - Thiboutot v. State, 405 A.2d 230, 235 (Me. 1979), aff'd, 448 U.S. 1 (1980);

Maryland - De Bleecker v. Montgomery County, 48 Md. App. 455, 427 A.2d 1075, 1077 (1981), rev'd on other grounds, 292 Md. 498, 438 A.2d 1348 (1982);

Massachusetts - Santana v. Registrars of Voters of Worcester, 425 N.E.2d 745, 749 (Mass. 1981);

Michigan - Dickerson v. Warden, Marquette Prison, 99 Mich. App. 630, 298 N.W.2d 841, 843 (1980);

Missouri - Shapiro v. Columbia Union National Bank and Trust Co., 576 S.W.2d 310, 316 (Mo. 1978), cert. denied, 444 U.S. 831 (1979);

New Hampshire - MBC, Inc. v. Engel, 119 N.H. 8, 397 A.2d 636, 637 (1979);

New Jersey - Endress v. Brookdale Community College, 144 N.J. Super. 109, 364 A.2d 1080, 1092 (1976);

New Mexico - Gomez v. Board of Education, 85 N.M. 708, 516 P.2d 679, 681-687 (1973);

New York - Johnson v. Blum, 58 N.Y.2d 454, 448 N.E.2d 449, 450-51 (1983); Felder v. Foster, 107 Misc. 2d 782, 436 N.Y.S.2d 675, 677 (Sup. Ct. 1981);

North Carolina - Snuggs v. Stanly County Department of Public Health, 63 N.C. App. 86, 303 S.E.2d 646, 647 (1983);

North Dakota - Kristensen v. Strinden, 343 N.W.2d 67, 71 (N.D. 1983);

Ohio - Jackson v. Kurtz, 65 Ohio App. 2d 152, 416 N.E.2d 1064, 1067 (1979); See Kilburn v. Guard, 5 Ohio St. 3d 21, 448 N.E.2d 1153 (1983);

Oklahoma - Powell v. Seay, 553 P.2d 161, 164 (Okla. 1976);

Oregon - Rosacker v. Multnomah County, 43 Or. App. 583, 603 P.2d 1216, 1218 (1979);

Pennsylvania - Commonwealth ex rel. Saunders v. Creamer, 464 Pa. 2, 345 A.2d 702, 703 n.3 (1975);

Rhode Island - Carvalho v. Coletta, 457 A.2d 614, 617 (R.I. 1983);

Utah - Kish v. Wright, 562 P.2d 625, 627 (Utah 1977);

Washington - State v. Tidwell, 32 Wash. App. 971, 651 P.2d 228, 230 n.2 (1982);

West Virginia - Harrah v. Leverette, 271 S.E.2d 322, 332 (W.Va. 1980); and

Wyoming - Board of Trustees v. Holso, 584 P.2d 1009, 1017 (Wyo. 1978).